



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 880, 881, 883, 884, 886, and 891

[Docket No. FR-5654-P-01]

RIN 2502-AJ22

**Streamlining Management and Occupancy Reviews for Section 8
Housing Assistance Programs and Amending Vacancy Payments
for Section 8 and Section 162 Housing Assistance Programs**

AGENCY: Office of the Assistant Secretary for Housing – Federal Housing Commissioner.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend existing project-based Section 8 regulations related to Management and Occupancy Reviews (MORs) and Vacancy Payments for the following programs: the Section 8 Housing Assistance Payments (HAP) Programs for New Construction, Substantial Rehabilitation, State Housing Agencies, New Construction financed under Section 515 of the Housing Act of 1949, the Loan Management Set-Aside Program, the HAP Program for the Disposition of HUD-Owned Projects, and the Section 202/8 Program. This rule would also amend the existing Section 162 regulations related to Vacancy Payments for the Section 202 Projects. Under this rule, MORs would be conducted in accordance with a schedule published in the Federal Register and subject to public comment. The first such schedule is being published for comment concurrently with this proposed rule, and can be found elsewhere in today's Federal Register. HUD is proposing this change in order to reduce the frequency of MORs, thereby minimizing interruptions in property operations created by onsite reviews, preserving staff time, and reducing costs. In addition, this proposed rule would reduce the vacancy payments made to the owner by HUD for a vacant assisted unit.

DATES: Comment Due Date. **[Insert date that is 60 days after the date of publication in**

the Federal Register.]

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between

8 a.m. and 5 p.m. Eastern Time weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information about management and occupancy reviews contact Lauryn Alleva, Program Administration Office, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-7000; telephone number 202-708-3730 (this is not a toll-free number). For information about vacancy claims, contact Yvette Viviani, Housing Assistance Policy Division, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-7000; telephone number 202-708-3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access these numbers through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes one of HUD's primary programs for providing rental housing assistance (Section 8). The purpose of Section 8 is to provide low-income families with decent, safe, and sanitary rental housing. The Section 8 program includes a project-based program and a tenant-based housing choice program. Under the project-based program, HUD may enter into an annual contributions contract (ACC)

with a public housing agency (PHA) through which HUD commits to provide the agency with funds to make housing assistance payments to a project owner. The PHA or state agency, acting as a contract administrator, then enters into a Housing Assistance Payments (HAP) contract with the owner. Under the HAP contract, the contract administrator agrees to subsidize certain units for a specified period of time for eligible low-income families. In certain circumstances HUD may act as the contract administrator, whereby HUD will directly enter into a HAP contract with an owner.

There are seven project-based Section 8 HAP programs administered by the Office of Multifamily Housing Programs: the HAP program for New Construction (24 CFR part 880) and the HAP program for Substantial Rehabilitation (24 CFR part 881), which provide rental assistance in connection with the development of newly constructed or substantially rehabilitated privately owned rental housing; the HAP Program for State Housing Agencies (24 CFR part 883); the HAP program for New Construction financed under Section 515 of the Housing Act of 1949 (24 CFR part 884), which applies to U.S. Department of Agriculture rural rental housing projects; the Loan Management Set Aside Program (24 CFR part 886, subpart A), which provides rental subsidies to HUD-insured or HUD-held multifamily properties experiencing immediate or potential financial difficulties; the Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C), which provides Section 8 assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects; and the Section 202/8 Program (24 CFR part 891, subpart E), which provides assistance for housing projects serving elderly or families and individuals with disabilities.

Section 162 Project Assistance Contracts (PACs) were authorized under the now repealed

Section 202(h) of the Housing Act of 1959 (12 U.S.C. 1701q). Although the program was repealed, Section 162 PACs are still renewed under the Section 162 program. Section 162 renewals provide funding for projects under the Section 202 Direct Loan Program for the Elderly and targeted persons with disabilities. A PAC is similar to the ACC in the Section 8 projects and the program operates under the same terms as the Section 8 program.

A. Management and Occupancy Reviews.

Contract administrators in the Section 8 above-listed programs are responsible for assessing the management and oversight of housing projects and for ensuring that owners comply with the requirements of the HAP contract. In order to assess an owner's compliance with the terms and conditions of its HAP contract, contract administrators conduct management and occupancy reviews (MORs).

Under existing regulations, the frequency of MORs across the seven project-based Section 8 programs administered by the Office of Multifamily Housing is inconsistent. Contract administrators in the HAP New Construction Program, HAP Substantial Rehabilitation Program, and HAP State Housing Agencies Program are required to review a project's operations "at least annually" to determine whether the owner is in compliance with the HAP contract. The regulations for the HAP Program for Section 515 projects, the Loan Management Set-Aside Program, and the Housing Assistance Program for the Disposition of HUD-Owned Projects are less prescriptive and only require that HUD review project operations "at such intervals as it deems necessary" to ensure an owner is in compliance with its HAP contract. Lastly, the Section 202/8 program regulations provide no reference to the frequency of MORs.

Completion of MORs can require Contract Administrators to visit the site and can cause interruption in project operations. The Contract Administrator spends approximately 8 hours of

staff time and additional resources to review every project. HUD has found that in recent years projects have been rated “Above Average” or “Superior” 35 percent of the time, “Satisfactory” 57 percent of the time, and “Below Average” or “Unsatisfactory” eight percent of the time. A full or limited review of all projects, including those that consistently receive high marks, puts a strain on HUD and project resources.

B. Vacancy Payments.

Under section 8(c)(4) of the United States Housing Act of 1937, a HAP contract providing project-based rental assistance may contain payments for vacant units. Similarly, a PAC may contain payments for vacant units. A contract administrator may continue to provide assistance under the contract for a dwelling unit that remains vacant after the effective date of the contract or a dwelling unit that becomes vacant only if the vacancy was not the fault of the owner of the dwelling unit, and the agency and the owner take every reasonable action to minimize the likelihood and extent of any such vacancy.

Under current regulations, an owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for a period of no more than 60 days after initial rent up or after an eligible family vacates the unit. These vacancy payments are made as part of an owner’s monthly HAP or PAC payment. If the vacancy persists past the 60 days, an owner may also receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months (debt-service vacancy payments). Debt-service vacancy payments are made semi-annually by the contract administrator upon request by the owner. In either case, an owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits and governmental payments under other programs).

Additionally, an owner is only eligible for payments if during the vacancy period for which payment is claimed an owner continues to market the unit in accordance with HUD requirements, takes all feasible actions to fill the vacancy, does not reject an eligible applicant except for good cause acceptable to the contract administrator; and maintains the unit in decent, safe, and sanitary conditions.

HUD has observed that the 60-day period for vacancy payments may be too long; resulting in contract units staying vacant for longer periods and extending the time it takes for eligible families to secure housing.

II. This Proposed Rule – Overview

A. Management and Occupancy Reviews.

HUD is proposing to revise the regulations that govern MORs for Section 8 HAP projects to provide consistency across programs and allow HUD the flexibility to set a schedule that is more in-line with the needs of the programs. Because many of the properties that receive assistance under a Section 8 HAP program have consistently received high marks on their MORs, reducing the frequency of MORs for these properties would result in fewer interruptions in project operations and would allow HUD to focus its staff and resources on areas that require greater attention. HUD proposes to amend the project-based Section 8 HAP program regulations to require that MORs be conducted in accordance with a schedule set out by the Secretary as published in the Federal Register, following notice and comment. HUD's proposal would adopt this new language in 24 CFR 880.612, 884.224, 886.130, and 886.355, and would re-title these sections "Management and occupancy reviews." Additionally, this proposal would add a new § 891.582, also titled "Management and occupancy reviews." Because the cross-reference in 24 CFR 881.601 and 24 CFR 883.701 includes 24 CFR 880.612, this new MOR requirement would

also apply to the HAP Substantial Rehabilitation Program and the HAP Program for State Housing Agencies, respectively, without changes being made to the regulations that are specific for those programs.

The first proposed schedule for MORs is published elsewhere in today's Federal Register and HUD invites public comment on that schedule. As provided in that notice, although HUD is proposing a schedule for MORs that is based on both a project's annual MOR rating and a HUD risk-based management model, nothing in this proposed rule nor the accompanying notice restricts HUD or the Contract Administrator from conducting additional MORs outside of this schedule pursuant to existing and future administrative guidelines.

B. Vacancy Payments.

HUD is also proposing to revise the regulations that permit owners of Section 8 HAP projects and Section 162 PAC projects to collect vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of a vacancy. HUD has observed that since vacancy payments are only available once units are ready to be rented, owners typically turn around a unit in 30 days rather than collect a reduced vacancy payment. HUD also wants to incentivize owners, when appropriate, to see that vacant units are rented more expeditiously to eligible individuals and families. The proposed rule would provide that owners could receive vacancy payments in the amount of 80 percent of the contract rent for the first 30 days of a vacancy in place of the current 60 days of a vacancy. This proposed rule would not preempt existing HAP contracts and renewal contracts under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) (MAHRA) that include a 60 day period for vacancy payments; however, all future renewal contracts under MAHRA will reflect this new requirement. Additionally, the proposed rule would not preempt existing PAC and renewals;

however, all future renewals would reflect this requirement. Owners may still apply for additional debt-service vacancy payments for up to 12 months after receiving the first 30 days of vacancy payments at 80 percent of the contract rent.

The proposed change would amend the vacancy payment references to the first 60 days in all seven project-based Section 8 HAP programs administered by the Office of Multifamily Housing and Section 162 program regulations. Specifically, HUD proposes to amend the “vacancy payment” definition to remove the reference to the length of the vacancy period in §§ 880.201, 881.201, 883.302, 891.520, and 891.655. HUD also proposes to remove the reference to “the first 60 days” and replace it with “the first 30 days of a vacancy” and remove any cross-references to the 60 day time period by amending the provisions describing the length of vacancy payment periods in §§ 880.501, 880.611, 881.501, 883.602, 884.106, 886.109, 886.309, 891.560, 891.650, 891.705, and 891.790. This proposed rule would also amend the provision regarding the length of the vacancy payment period in § 886.309(d) so that it is consistent with all the other vacancy length payment provisions, and amends § 886.109 to distinguish between vacancies during rent-up, vacancies after rent-up and debt-service vacancy payments. Additionally, HUD proposes to change headings in §§ 880.611, 886.106, 886.309, 891.650(d), and 891.790 for consistency with the other sections.

III. Findings and Certifications

Regulatory Review - Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and

to modify, streamline, expand, or repeal them in accordance with what has been learned.”

Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866. More importantly, for HUD program participants, this rule is part of HUD’s retrospective review carried out under Executive Order 13563, and designed to reduce burden on well-performing program participants.

Need for Regulatory Action

Executive Order 12866 emphasizes that “Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.” Because the schedule for MORs was established by regulation, HUD (1) can only reduce burden for those programs required to have annual MORs, and (2) bring consistency to the schedule for MORs for the other programs, through regulation. Moreover, HUD has determined that the current MORs schedule is inconsistent and, as currently codified, places a strain on HUD resources and on projects that consistently receive high marks on their MORs. As described in this preamble, HUD has recently determined that projects have been rated as “Above Average”, “Superior”, or “Satisfactory” 92 percent of the time. This fact, and the costs placed on projects to prepare for a MOR and that may result from the interruption in normal operations caused by a MOR, makes reducing this burden an important topic for rulemaking.

Similarly, HUD can only reduce the period of vacancy payments from 60 days to 30 days

for the purpose of turning units around more quickly for the next individual or family ready to occupy the unit by regulation. Additionally, while vacancy payments are only available once the unit is ready to be rented, this rule proposes to further reduce any incentive for owners not to rent the unit as quickly as possible. This is consistent with the need to ensure a constant supply of affordable housing. As a result, consistent with Executive Order 13563, this rulemaking is intended to modify, streamline, or repeal burdensome regulations. Thus, the placement of this proposed rule on HUD's Retrospective Review Plan. See page 6 of HUD's updated Retrospective Review Plan at http://portal.hud.gov/hudportal/documents/huddoc?id=EO13563_PLAN.PDF.

Discussion of Costs and Benefits

As discussed in this preamble, the proposed amendments to the MORs regulations would provide consistency to the scheduling of MORs and allow HUD to issue the schedule by publishing it in the Federal Register, subject to public comment. Because many of the properties that receive assistance under a Section 8 HAP contract have consistently received high marks on their MORs, reducing the frequency of a MOR would result in fewer interruptions in project operations.

The purpose of a MOR is to verify compliance of the property with the terms of the HAP contract. Scheduling of the MOR begins with a letter sent to the owner generally 30 days, but at least 2 weeks, in advance of the date the MOR is to be undertaken. The on-site review by HUD involves inspection of a sampling of units. The owner is responsible for providing notice to residents that their units may be chosen for inspection. The review also involves a determination of owner compliance with civil rights regulations, including Title VI, Title VII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Before the actual

inspection by HUD, HUD will review property status by referring to the last inspection performed, and note any exigent health and safety concerns previously identified. HUD will also review complaints from residents, congressional inquiries and media reports, if any, to verify all concerns were responded to in a timely manner. Any contractual violations and imposed sanctions will also be reviewed. As this description of an MOR reveals, it is not an insignificant process, but for those properties that consistently receive high marks, HUD concluded that it can and should reduce, the frequency of MORs. In reaching this conclusion, HUD has also determined that the deficiencies found in MORs of properties that receive high marks do not offset the costs to the project in preparing for the MOR and in the disruption to normal property operations that inevitably accompany a MOR.

With respect to vacancy payments, the proposed amendments to the vacancy payments regulations would make units available to eligible families earlier rather than later and further incentivize owners to rent the unit as quickly as possible. As the need for affordable housing remains constant, it is important that owner provide for occupancy of vacant units at the earliest date possible. As noted earlier in this preamble, vacancy payments are only available once units are ready to be rented, meaning that units are decent, safe, and in sanitary condition and are therefore available for occupancy. Vacancy payments are not paid for the days that a unit is being prepared for occupancy. HUD has observed that owners typically turn around a unit in 30 days rather than collect a reduced vacancy payment. Therefore, the amendment largely reflects existing practice among owners. The number of units receiving vacancy payments is small relative to the total number of units utilized in project-based section 8. For those owners that may not move to rent units as quickly as HUD hopes or expects, the reduction of vacancy payments to a 30-day period should incentivize these owners to take actions that will result in

available units being promptly rented.

HUD first provided notification of its intention to reduce vacancy payments from 60 days to 30 days in its FY 2013 Congressional Justifications.¹ HUD was unable to move to implement the proposals in the FY 2013 Congressional Justification as early as HUD had intended. However, the proposal to reduce vacancy payments from 60 days to 30 days remained in HUD's FY 2014 Congressional Justification and HUD's FY 2015 Congressional Justification² and, through this rule, HUD proposes to proceed to implement the reduced vacancy payment amendment.

Due to data limitations, HUD is unable to determine the aggregate saving resulting from reducing the vacancy payment to 30 days. HUD estimates, however, that taxpayers as a whole will realize a benefit from the shorter payment period and from the incentive for owners created by the rule to take actions that will result in available units being more promptly rented. These changes would result in a savings to the government and represents a transfer from owners to the taxpayer.

Information Collection Requirements

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0178. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The overall burden of this collection would be reduced, however, by the reducing the frequency

¹ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/2013/main_toc.

² See respectively page Y-2 at <http://portal.hud.gov/hudportal/documents/huddoc?id=PROJBASDRA.pdf> and page Y-3 at http://portal.hud.gov/hudportal/documents/huddoc?id=fy15cj_pbra.pdf.

of MORs for properties that perform well. As discussed in HUD's notice proposing the MOR schedule for comment published elsewhere in today's Federal Register, HUD has determined that the net reduction of burden resulting from this rule represents a 73 percent savings from that currently codified. The public is referred to HUD's notice for additional information regarding the determination of this savings.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that the burden reduction measures provided by this rule would not have a significant economic impact (beneficial or adverse) on a substantial number of small entities.

As noted earlier in this preamble, this proposed rule is one of the regulatory actions being undertaken as part of HUD's Retrospective Review Plan, established in accordance with Executive Order 13563. The primary focus of this rule is to reduce burden, but reduce burden for project owners that manage their projects well in accordance with HUD regulations. In establishing requirements as to how HUD subsidized housing is to be managed and administered, the requirements are not based on whether a project owner is a large entity or small entity. The focus of such requirements is on ensuring that the units that HUD subsidizes are decent, safe and sanitary and are made available to eligible tenants in a nondiscriminatory manner. These are not requirements that HUD can alter on the basis that a project owner is a small entity. However, this rule reduces burden for all project owners, large or small, that manage their properties well in accordance with HUD regulations and score well under the MOR rating system. This proposed rule would provide that for these properties there is no need for an annual MOR, reduce burden for the project owner, whether such owner is a large or small entity.

The proposal to reduce the period in which HUD will provide vacancy payments from 60 days to 30 days is also a proposal directed to project owners that manage their projects well. As noted earlier in this preamble, the majority of project owners rent vacant units (units ready for occupancy) within 30 days, and therefore the reduction of the vacancy payment period from 60

to 30 days will have minimal impact. As also noted earlier in this preamble, since 2013, HUD has alerted owners of its intention to reduce the vacancy payment period from 60 to 30 days. For owners that may regularly or from time-to-time undertake little effort to rent a vacant unit within 30 days of availability for occupancy, the reduction is intended to serve as motivation to rent the vacant unit within 30 days. The rule would not remove the option in the existing regulations that allow owners to apply for additional debt-service vacancy payments for up to 12 months after receiving the first 30-days of vacancy payments at 80 percent of the contract rent. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the programs that

would be affected by this rule is 14.195.

List of Subjects

24 CFR Part 880

Annual contributions contract, audit, construction, contract administration, financing, housing assistance, housing assistance payments contract, management, new construction, owner, public housing agency, property standards, rent, section 8, tenants, and units.

24 CFR Part 881

Annual contributions contract, audit, contract administration, conversion, housing assistance, housing assistance payments contract, inspections, low-income family, owner, public housing agency, rent, section 8, substantial rehabilitation, tenants, and units.

24 CFR Part 883

Annual contributions contract, audit, contract administration, housing finance agencies, housing assistance, housing assistance payments contract, low-income family, owner, rent, section 8, substantial rehabilitation, state agencies, tenants, and units.

24 CFR Part 884

Annual contributions contract, audit, contract administration, conversion, housing assistance, housing assistance payments contract, income limit, inspections, low-income family, maintenance, new construction, owner, public housing agency, rent, rural housing, section 8, security deposits, tenants, units, and utility deposits.

24 CFR Part 886

Audit, contract administration, housing assistance, housing assistance payments contract, income, inspection, maintenance, marketing, mortgages, owner, rehabilitation, rent, section 8, security deposits, special allocations, tenants, units, and utility deposits.

24 CFR Parts 891

Capital advances, persons with disabilities, project rental assistance, rent, section 8, supportive housing for persons with disabilities, supportive services, tenants, and units.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 880, 881, 883, 884, 886, and 891 as follows:

PART 880— SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

2. In § 880.201, revise the definition of “Vacancy payment” to read as follows:

§ 880.201 Definitions.

* * * * *

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled.

* * * * *

3. In § 880.501, revise paragraphs (c), (d)(2) and (3) to read as follows:

§ 880.501 The contract.

* * * * *

(c) Housing Assistance Payments to Owners under the Contract. (1) The housing assistance payments made under the Contract are:

- (i) Payments to the owner to assist eligible families leasing assisted units, and
- (ii) Payments to the owner for vacant assisted units (“vacancy payments”) if the conditions specified in §880.611 are satisfied.

(2) The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies under paragraph (d)(3) of this section, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) * * *

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 30 days of a vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds the vacancy period in paragraph (d)(2) of this section, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

* * * * *

4. In § 880.611, revise the introductory text of paragraphs (b), (c), and (d) to read as follows:

§ 880.611 Conditions for receipt of vacancy payments.

* * * * *

(b) Vacancies during Rent-up. For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 30 days of a vacancy, if the owner: * * *

(c) Vacancies after Rent-Up. If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 30 days of a vacancy, if the owner: * * *

(d) Debt-service vacancy payments. If an assisted unit continues to be vacant after the vacancy period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

* * * * *

5. Revise § 880.612 to read as follows:

§ 880.612 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the Federal Register, following notice and the opportunity to comment.

(b) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

**PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR
SUBSTANTIAL REHABILITATION**

6. The authority citation for 24 CFR part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

7. In § 881.201, revise the definition of “Vacancy payment” to read as follows:

§ 881.201 Definitions.

* * * * *

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled.

* * * * *

8. In § 881.501,

a. Revise paragraph (c)(2);

b. Redesignate the undesignated paragraph in paragraph (c) as (c)(3) and revise the newly redesignated paragraph; and

c. Revise paragraphs (d)(2) and (3) to read as follows:

§ 881.501 The contract.

* * * * *

(c) * * *

(2) Payments to the owner for vacant assisted units (“vacancy payments”) if the conditions specified in § 880.611 of this chapter are satisfied.

(3) The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments under paragraph (d)(3), which are made semi-annually by the contract administrator upon requisition by the owner.

(d) * * *

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 30 days of a vacancy, subject to the conditions in § 880.611 of this chapter. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds the vacancy period in paragraph (d)(2), a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611 of this chapter, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

9. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

10. In § 883.302, revise the definition of “Vacancy payment” to read as follows:

§ 883.302 Definitions.

* * * * *

Vacancy payments. The housing assistance payment made to the owner by the State Agency for a vacant, assisted unit if certain conditions are fulfilled.

* * * * *

11. In § 883.602:

a. Redesignate the undesignated paragraph in paragraph (b) as (b)(3) and revise the newly redesignated paragraph; and

b. Revise paragraphs (c)(2) and (3) to read as follows:

§ 883.602 The contract.

* * * * *

(b) * * *

(3) The housing assistance payments are made monthly by the State Agency upon proper requisition by the owner, except payments under paragraph (c)(3) of this section, which are made semi-annually by the Agency upon proper requisition by the owner.

(c) * * *

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 30 days of a vacancy, subject to the conditions in § 880.611 of this chapter. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as the Agency directs in accordance with HUD guidelines.

(3) For a vacancy that exceeds the vacancy period in paragraph (c)(2) of this section, a housing assistance payment for the vacant unit will be made, subject to the conditions in §

880.611 of this chapter, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

* * * *

**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM,
NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING
PROJECTS**

12. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

13. In § 884.106, revise the introductory text of paragraphs (b) and paragraph (c)(1), and revise paragraph (d)(1) to read as follows:

§ 884.106 Housing assistance payment to owners.

* * * *

(b) Vacancies during rent-up. If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy, in accordance with the procedure set forth in § 884.213(b): * * *

(c) Vacancies after rent-up. (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy; provided, however, That if the Owner collects

any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also §884.115). The Owner shall not be entitled to any payment under this paragraph (c)(1) unless the Owner:

* * *

(d) Debt-service vacancy payments. (1) If a unit continues to be vacant after the vacancy period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

* * * * *

14. Revise § 884.224 to read as follows:

§ 884.224 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the Federal Register, following notice and the opportunity to comment.

(b) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

**PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—
SPECIAL ALLOCATIONS**

15. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

16. In § 886.109, revise paragraph (c) and add paragraphs (d), (e), (f), and (g) to read as follows:

§ 886.109 Housing assistance payments to owners.

* * * * *

(c) Vacancies during rent-up. If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy, provided that the owner:

(1) Has submitted a list of units leased as of the effective date and a list of the units not so leased;

(2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract;

(3) Has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on the owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and

(4) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) Vacancies after rent-up. If an Eligible Family vacates its unit (other than as a result of action by the owner which is in violation of the Lease or the Contract or any applicable law), the owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the owner to HUD or as HUD may direct. (See also § 886.115.) The owner shall not be entitled to any payment under this paragraph unless he or she:

(1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy,

(2) Has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and

(3) Has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) Payments for units where family is evicted. If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this section unless the request for such payment is supported by a certification that the provisions of § 886.128 and part 247 of this title have been followed.

(f) Prohibition for double compensation for vacancies. The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 886.116).

(g) Debt-service vacancy payments. (1) If a contract unit continues to be vacant after the vacancy period specified in paragraph (c) or (d) of this section, the owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.

(ii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim form and in accordance with the standards prescribed by HUD, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(iv) The owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

17. Revise § 886.130 to read as follows:

§ 886.130 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the Federal Register, following notice and the opportunity to comment.

(b) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

18. Amend § 886.309 to read as follows:

a. Revise paragraphs (c) and (d);

b. In paragraph (e), remove the phrase “to § 886.327” and add in its place “to § 886.328;” and

c. In paragraph (g), revise the heading of paragraph (g) and paragraph (g)(1).

§ 886.309 Housing assistance payment to owners.

* * * * *

(c) Vacancies during rent-up. If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance

payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy, provided that the Owner:

- (1) Has submitted a list of units leased as of the effective date and a list of the units not so leased;
- (2) Sixty days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract;
- (3) Has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and
- (4) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) Vacancies after rent-up. If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for the first 30 days of a vacancy. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also § 886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she:

- (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy; and
- (2) Has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other

appropriate sources to refer eligible applicants, and advertising the availability of the unit; and
 (3) Has not rejected any eligible applicant, except for good cause acceptable to HUD.

(g) Debt-service vacancy payments. (1) If a contract unit continues to be vacant after the vacancy period specified in paragraph (c) or (d) of this section, the owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

* * * * *

19. Revise § 886.335 to read as follows:

§ 886.335 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the Federal Register, following notice and the opportunity to comment.

(b) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

**PART 891— SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH
 DISABILITIES**

20. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

21. In § 891.520, revise the definition of “Vacancy payment” to read as follows:

§ 891.520 Definitions applicable to 202/8 projects.

* * * * *

Vacancy payment means the housing assistance payment made to the owner by HUD for a vacant assisted unit if certain conditions are fulfilled.

* * * * *

22. In § 891.560, remove the word “Borrower” and add in its place the word “Owner” wherever it appears, and revise paragraph (c)(2) to read as follows:

§ 891.560 HAP contract.

* * * * *

(c) * * *

(2) Payments to the owner for vacant assisted units (vacancy payments). The amount of and conditions for vacancy payments are described in § 891.650. The housing assistance payments are made monthly by HUD upon proper requisition by the owner, except payments for vacancies under § 891.650(d), which are made semiannually by HUD upon requisition by the owner.

* * * * *

23. Add § 891.582 to read as follows:

§ 891.582 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the HAP Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the Federal Register, following notice and the opportunity to comment.

(b) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

24. In § 891.650, remove the word “Borrower” and add in its place the word “Owner” wherever it appears and revise the introductory text of paragraphs (b), (c), and (d) to read as follows:

§ 891.650 Conditions for receipt of vacancy payments for assisted units.

* * * * *

(b) Vacancies during rent-up. For each unit that is not leased as of the effective date of the HAP contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 30 days of a vacancy, if the owner:

* * * * *

(c) Vacancies after rent-up. If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 30 days of a vacancy, if the owner:

* * * * *

(d) Debt-service vacancy payments. If a unit continues to be vacant after the vacancy period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional

vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

* * * * *

25. In § 891.655, revise the definition of “Vacancy payment” to read as follows:

§ 891.655 Definitions applicable to 202/162 projects.

* * * * *

Vacancy payment means the housing assistance payment made to the owner by HUD for a vacant assisted unit if certain conditions are fulfilled.

* * * * *

26. In § 891.705, remove the word “Borrower” and add in its place the word “Owner” wherever it appears, and revise paragraph (c)(2) to read as follows:

§ 891.705 Project assistance contract.

* * * * *

(c) * * *

(2) Payments to the owner for vacant assisted units (vacancy payments). The amount of and conditions for vacancy payments are described in § 891.790. HUD makes the project assistance payments monthly upon proper requisition by the owner, except payments for vacancies under § 891.790(d), which HUD makes semiannually upon requisition by the owner.

* * * * *

27. In § 891.790, remove the word “Borrower” and add in its place the word “Owner” wherever it appears, and revise the introductory text of paragraphs (b), (c), and (d) to read as follows:

§ 891.790 Conditions for receipt of vacancy payments for assisted units.

* * * * *

(b) Vacancies during rent-up. For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 30 days of a vacancy, if the owner:

* * * * *

(c) Vacancies after rent-up. If an eligible family vacates an assisted unit (or residential space in a group home) the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 30 days of a vacancy, if the owner:

* * * * *

(d) Debt-service vacancy payments. If an assisted unit (or residential space in a group home) continues to be vacant after the vacancy period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space) for up to 12 additional months for the unit, if:

* * * * *

Dated: December 11, 2014

Biniam Gebre
Acting Assistant Secretary for
Housing- Federal Housing Commissioner

[FR-5654-P-01]

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